

(2012) 11 SC CK 0026

In the Supreme Court Of India

Case No : Criminal Appeal No. 1963 of 2012 (Arising out Special Leave Petition (Criminal) No. 8150 of 2008)

Dnyaneshwar Haibhau Kulal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2013) 1 SCALE 504

Hon'ble Judges : Altamas Kabir, C.J.; J. Chelameswar, J

Bench : Division Bench

Advocate : Minakshi Vij, AOR. SCLSC, for the Appellant; Mike P. Desai and Asha Gopalan Nair, AOR, for the Respondent

Final Decision : Disposed Of

Judgement

1. Leave granted.
2. This appeal is directed against the judgment and order dated 11th January, 2008, passed by the Bombay High Court in Criminal Appeal No. 464 of 2007, along with Confirmation Case No. 1 of 2007.
3. The Confirmation Case was filed by the State of Maharashtra, seeking confirmation of the death penalty imposed upon the Appellant, Dnyaneshwar Haibhau Kulal, in Sessions Case No. 2 of 2006, by the Sessions Judge, Satara, on 18th November, 2006, for the offence punishable u/s 302 of the Indian Penal Code.
4. According to the prosecution case, the Appellant was convinced that the deceased Dhondiram used black magic, due to which his father Haribhau had expired. On 3rd September, 2004, PW-5, Genba, gave a missing report regarding Dhondiram and, thereafter, on the basis of a FIR lodged by the PW-7, Tanaji, Criminal Case bearing No. 64 of 2004, for offences alleged to have been committed under Sections 302 and 201 of the Indian Penal Code, was registered

against the Appellant.

5. From the evidence of PW-7, Tanaji Dhondiram Kulal, son of the deceased, it appears that on 2nd September, 2004, news was received that in the field near "Sanand" a headless body had been found. On reaching there, P.W. 7 identified the body to be that of Dhondiram and, thereafter, complaint was lodged, being FIR Crime No. 64 of 2004, under Sections 302 and 201 of the Indian Penal Code. Subsequently, on 27th October, 2004, some other articles, including a skull, were recovered from the field known as Jotibacha Inam. Thereafter, after investigation, the Investigating Officer filed chargesheet against the Appellant, sent him to trial for having allegedly committed the murder of Dhondiram.

6. PW-6, Dashrath Bhau Kachare, is the main witness on whom the prosecution relies, since there are no other witnesses to the incident. According to the said witness, the Appellant met him when he was in the field and took out the head of the deceased from a gunny bag, which he was carrying claiming that he had cut off the head from the deceased after killing him.

7. Relying mainly on the said evidence, and the circumstantial evidence, which had been gathered, the learned Sessions Judge convicted the Appellant u/s 302 read with Section 201 Indian Penal Code and upon holding that this was one of those rarest of rare cases awarded the death penalty to the Appellant, which subsequently, came before the High Court for confirmation.

8. Accepting the decision of the trial court, the High Court while confirming the conviction of the Appellant, also upheld the death sentence awarded to him by the trial court, in the circumstances mentioned in paragraph 45 of the impugned judgment. As many as 11 reasons have been given by the High Court to hold that this was one of such rarest of rare cases, which merited the death penalty.

9. We have carefully perused the said reasons and while there is no doubt that the murder appears to have been committed in a highly depraved manner, this does not, in our view, bring the incident within the concept of rarest of rare cases, for being awarded the death penalty.

10. Accordingly, while confirming the conviction of the Appellant u/s 302 read with Section 201 Indian Penal Code, we modify the sentence awarded to the Appellant and alter the death sentence awarded to him to one of life sentence.

11. The appeal is allowed to the aforesaid extent.

12. Leave granted.

13. The appeal is allowed in terms of the signed order.